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Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions of the United States Court of Customs and Patent Appeals and the United States Customs Court

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This issue contains

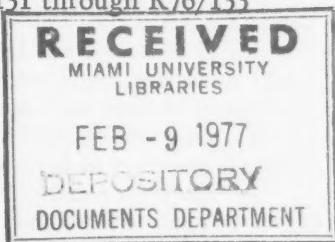
T.D. 77-26 through 77-29

C.D. 4682 through 4684

C.R.D. 76-14

Protest abstracts P76/292 through P76/299

Reap. abstracts R76/131 through R76/133



DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

(T.D. 77-26)

Antidumping—Tuners (of the type used in consumer electronic products) from Japan

The Secretary of the Treasury makes public a modification of the finding of dumping with respect to tuners (of the type used in consumer electronic products) from Japan; Section 153.46, Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
Washington, D.C., January 13, 1977.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 153—ANTIDUMPING

On July 16, 1976, there was published in the Federal Register (41 FR 29435) a "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to tuners (of the type used in consumer electronic products) from Japan sold for export to the United States by Sony Corporation of Japan.

Reasons for the tentative determination were published in the above-mentioned notice, and interested persons were afforded an opportunity to make written submissions or request the opportunity to present oral views in connection therewith.

No written submissions or requests to present oral views having been received, I hereby determine that for the reasons stated in the above-mentioned notice, tuners (of the type used in consumer electronic products) from Japan are no longer being, nor likely to be, sold in the United States at less than fair value by Sony Corporation of Japan, and the above mentioned finding of dumping is hereby modified to exclude tuners (of the type used in consumer electronic products) from Japan sold by Sony Corporation of Japan.

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is hereby amended to show the exclusion from the finding of dumping of tuners (of the type used in consumer electronic products) from Japan sold by Sony Corporation of Japan.

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<i>Merchandise</i>	<i>Country</i>	<i>T.D.</i>	<i>Modified by</i>
Tuners (of the type used in consumer electronic products), except:	Japan	70-257	75-80 76-143
(I) those produced and sold by Matsushita Electric Industrial Co., Ltd., and Matsushita Electric Trading Co., Ltd.			76-215
(II) those sold by Victor Company of Japan Ltd.,			77-26
(III) those sold by Tokyo Shibaura Electric Co., Ltd.,			
(IV) those produced and sold by Sanyo Electric Co., Ltd., and Sanyo Electric Trading Co., Ltd., and			
(V) those sold by Sony Corporation of Japan.			

This determination is published pursuant to section 153.44(d), Customs Regulations (19 CFR 153.44(d)).

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

(APP-2-04)

JERRY THOMAS,
Under Secretary of the Treasury.

[Published in the FEDERAL REGISTER January 12, 1977 (42 FR 2501)]

(T.D. 77-27)

Articles Conditionally Free, Subject to a Reduced Rate, etc.—Customs Regulations amended

Section 10.173(a)(3) and 172.22(c) of the Customs Regulations, relating to the treatment of charges against the bond required in connection with certain entries of merchandise under the Generalized System of Preferences, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 10 — ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

PART 172 — LIQUIDATED DAMAGES

Treasury Decision 76-2, published in the FEDERAL REGISTER on December 31, 1975 (40 FR 60047), added sections 10.171 through

10.178 to the Customs Regulations (19 CFR 10.171-178) to set forth a procedure for the duty-free entry of certain merchandise from designated beneficiary developing countries pursuant to the Generalized System of Preferences established by the President in accordance with Title V of the Trade Act of 1974 (Public Law 93-618, 88 Stat. 1978).

Under section 10.173(a) of the Customs Regulations, the importer or consignee of a shipment of eligible merchandise valued in excess of \$250 is required to file with the district director of Customs at the time of entry a properly completed Certificate of Origin, Form A (or an acceptable duplicate thereof), as evidence of the country of origin. If a properly completed Certificate of Origin (or duplicate thereof) is not produced at the time of entry, the entry will still be accepted, if all other applicable requirements are met, provided the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required Certificate of Origin.

The bond is required to be given in the amount prescribed for that bond under section 113.14 of the Customs Regulations (19 CFR 113.14): in the case of the single entry bond, Customs Form 7551, the amount must be equal to the value of the merchandise as set forth in the entry, plus the estimated duty (including any taxes required by law to be treated as duties) and the estimated amount of any other taxes imposed upon or by reason of importation; in the case of the term bonds, Customs Forms 7553 and 7595, the required amounts are \$10,000 and \$100,000, respectively, or such larger amount as the district director may deem necessary.

In the event a properly completed Certificate of Origin (or duplicate thereof) is not delivered by the importer or consignee within 60 days after the entry, or such additional period as the district director may, for good cause, allow, section 10.173(a)(3) presently requires that liquidated damages be assessed in the full amount of the bond, if the bond was given on Customs Form 7551, or in the event the bond was given on Customs Form 7553 or 7595, in the amount that would have been demanded had bond been given on Customs Form 7551.

However, section 172.22(c) of the Customs Regulations (19 CFR 172.22(c)), provides, in part, that when free entry is dependent upon the production of a document which the importer fails to produce, the district director shall treat the claim for free entry as abandoned upon the assessment and payment of duty and may cancel the bond given for the production of the free entry document without the collection of liquidated damages.

In view of the conflict presently existing in these provisions with respect to the assessment of liquidated damages in the event of a failure to produce a document on which a claim for free entry depends, a reappraisal of the requirements in this regard presently set forth in

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section 10.173(a)(3) of the Customs Regulations has resulted in the conclusion that the assessment of liquidated damages in the manner prescribed by that section is unwarranted.

Therefore, it is considered desirable to amend section 10.173(a)(3) of the Customs Regulations to provide that, in the event the importer or consignee fails to deliver a properly completed Certificate of Origin to the district director within the time allowed, the district director shall treat the entry as dutiable and may cancel the bond (or the charge against the bond) given for the production of the Certificate of Origin in accordance with section 172.22(c) of the Customs Regulations.

Upon a reexamination of the wording of section 172.22(c) of the Customs Regulations, it is also considered necessary to amend that section to emphasize that, in the event a term bond is given to secure the production of a duty-free document, it is the charge against the bond (created by the failure to produce the document), and not the bond itself, which is subject to cancellation by the district director.

Accordingly, sections 10.173(a)(3) and 172.22(c) of the Customs Regulations (19 CFR 10.173(a)(3), 172.22(c)) are amended in the following manner:

PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Paragraph (a)(3) of section 10.173 is amended by deleting the fourth and fifth sentences and adding in lieu thereof a new fourth sentence to read as follows:

§ 10.173 Evidence of the country of origin.

(a) * * *

(3) *Release under bond.* * * * If the Certificate of Origin is not delivered to the district director within 60 days of the date of entry or such additional period as the district director, for good cause, may allow, the district director shall treat the entry as dutiable and may cancel the bond or the charge against the bond, as appropriate, in accordance with section 172.22(c) of this chapter.

(R.S. 251, as amended, sec. 623, 624, 46 Stat. 759, as amended, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1623, 1624, 2463(b))

PART 172 - LIQUIDATED DAMAGES

Paragraph (c) of section 172.22 is amended to read as follows:

§ 172.22 Special cases acted on by district director of Customs.

* * * *

(c) *Nonproduction of free-entry or reduced-duty documents.* When free entry or the application of a reduced rate of duty is dependent upon the production of a document which the importer fails to produce, or when a conditionally-free or reduced duty provision claimed on entry is held to be inapplicable, the claim for free entry or reduced rate of duty shall be treated by the district director as abandoned upon the assessment and payment of duty and the bond or, in the case of a term bond, the charge against the bond) given for the production of the free-entry or reduced-duty document may be cancelled without the collection of liquidated damages.

(R.S. 251, as amended, sec. 623, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

Inasmuch as the foregoing amendments liberalize or clarify the present provisions of the Customs Regulations and place no affirmative duty or burden on the public, prior notice and public procedure thereon is unnecessary and good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

Effective date. This amendment shall be effective upon publication in the **FEDERAL REGISTER**. (096011)

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved January 6, 1977,
JERRY THOMAS,
Under Secretary of the Treasury.

[Published in the **FEDERAL REGISTER** January 17, 1977 (42 FR 3161)]

(T.D. 77-28)

Vessels in Foreign and Domestic Trades—Customs Regulations amended
Section 4.15 of the Customs Regulations, pertaining to the dutiability of foreign purchases of vessel equipment by American fishing vessels, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 4 — VESSELS IN FOREIGN AND DOMESTIC TRADES

On February 27, 1976, a notice of proposed rulemaking was published in the **FEDERAL REGISTER** (41 FR 8490), which proposed to amend section 4.15 of the Customs Regulations (19 CFR 4.15) pertaining to the dutiability under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), of vessel equipment purchased in foreign ports by American fishing boats.

An American vessel licensed to engage in the fisheries is not considered to be engaged in foreign trade and therefore is not subject to duties arising under section 466 of the Tariff Act, except when such vessel exchanges its license for a registry or obtains a permit to touch and trade on Customs Form 1379 as required by section 4.15(a) of the Customs Regulations (19 CFR 4.15(a)), or does in fact engage in foreign trade. The United States Customs Service has ruled, as reflected in footnote 28 to section 4.15(a), that a vessel licensed for the fisheries which "puts into a foreign port or place and only obtains bunkers, stores, or supplies suitable for a fishing voyage" is not considered to have touched and traded there. Furthermore, the Customs Service has not required American fishing vessels to obtain a clearance or a permit to touch and trade when they depart the United States with the intention of purchasing fish nets or netting or other vessel equipment outside of the United States. Consequently, fish nets or netting purchased in this manner by American fishing vessels has not been subject to the assessment of the 50% duty provided for in section 466, Tariff Act of 1930, as amended.

The United States Customs Service reviewed its position in this matter in light of the amendment to section 466 of the Tariff Act of 1930 by Public Law 91-654, January 5, 1971, and has determined that the term "vessel supplies," as used in footnote 28 to section 4.15 of the Customs Regulations, does not include fish nets or netting. Thus, American fishing vessels which depart the United States for foreign ports with the intent of purchasing fish nets or netting or other vessel equipment (other than equipment which was damaged or lost on the voyage) shall be required to obtain either a clearance for the foreign port (where the vessel holds a register) or a permit to touch and trade (where the vessel is merely licensed to engage in the fisheries), whether or not the vessel engages in fishing on that voyage.

The purpose of the amendments is to require the payment of duty under section 466 of the Tariff Act on fish nets or netting or other vessel equipment purchased and laden in foreign ports, including preordered equipment. Therefore, the amendments provide that equipment purchases are dutiable, whether intended or not, inasmuch as vessels making those purchases are considered to be engaged in the foreign trade. It is emphasized that the duty under section 466 on fish nets or netting or other vessel equipment purchased in a foreign port will be remitted if the purchases replace items that, having been aboard the vessel when it cleared the United States, were damaged during the course of the voyage as a result of stress of weather or other casualty.

Interested persons were given until April 28, 1976, to submit relevant data, views, or arguments regarding the proposal. After consideration of all comments received, the following modifications were made in the proposed amendments:

The second sentence of the amendment to section 4.15(a) has been reworded to clarify the circumstances under which the master must clear for a foreign port or obtain a permit to touch and trade. Those circumstances are when a fishing vessel departs from the United States and there is an intent to stop at a foreign port (1) to lade vessel equipment which was preordered, (2) to purchase and lade vessel equipment, or (3) to purchase and lade vessel equipment to replace existing vessel equipment.

Two new sentences are added at the end of section 4.15(a) to provide that purchases of fish nets or netting or other vessel equipment, whether intended at the time of departure or not, are subject to declaration, entry, and payment of duty pursuant to section 466 of the Tariff Act of 1930, as amended, and that the duty may be remitted if it is established that the purchases resulted from stress of weather or other casualty.

The words "Fish netting," used in the parenthetical statement in the amendment to footnote 28, are changed to "Fish nets and netting," in order to conform with the terms used in section 466 of the Tariff Act of 1930, as amended, and the parentheses are deleted.

Accordingly, section 4.15(a) of the Customs Regulations (19 CFR 4.15(a)) and the last paragraph of footnote 28 to section 4.15(a), modified to include these changes, are adopted as set forth below.

Effective date. This amendment shall become effective 90 days after publication in the Customs Bulletin. (096086)

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved January 14, 1977,

Jerry Thomas,

Under Secretary of the Treasury

[Published in the FEDERAL REGISTER January 17, 1977 (42 FR 3160)]

PART 4 — VESSELS IN FOREIGN AND DOMESTIC TRADES

Section 4.15(a) is amended to read as follows:

4.15 Fishing vessels touching and trading at foreign places.

(a) Before any vessel enrolled and licensed or licensed to engage in the fisheries shall touch and trade at a foreign port or place, the master shall obtain from the district director a permit on Customs Form 1379 to touch and trade. When a fishing vessel departs from the United States and there is an intent to stop at a foreign port (1) to lade vessel equipment which was preordered, (2) to purchase and lade vessel equipment, or (3) to purchase and lade vessel equipment to replace existing vessel equipment, the master of the vessel must either clear for that foreign port or obtain a permit to touch and trade, whether or not the vessel will engage in fishing on that voyage.²⁸ Purchases of such equipment, whether intended at the time of departure or not, are subject to declaration, entry, and payment of duty pursuant to section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466). The duty may be remitted if it is established that the purchases resulted from stress of weather or other casualty.

* * * *

The last paragraph of footnote 28 to section 4.15(a) is amended to read as follows:

* * *

If such a vessel puts into a foreign port or place and only obtains bunkers, stores, or supplies suitable for a fishing voyage, it is not considered to have touched and traded there. Fish nets and netting are considered vessel equipment and not vessel supplies.

(R.S. 251, as amended, R.S. 4364, secs. 466, 624, 46 Stat. 718, as amended, 759 (19 U.S.C. 66, 1466, 1624, 46 U.S.C. 310))

(T.D. 77-29)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 13, 1977.

The following are synopses of drawback rates and amendments issued October 22, 1976, to November 30, 1976, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the effective dates of exportation, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) Company: Amerock Corporation, Rockford, IL
Articles: Finished and unfinished builders hardware
Merchandise: Zinc ingots
Factories: Rockford and Winnebago, IL
Statement signed: August 5, 1976
Basis of claim: Appearing in
Effective date: September 18, 1974
Rate forwarded to RC's of Customs: New York and Chicago, October 22, 1976

(B) Company: Aspro, Inc., Westport, CT
Articles: Pulleys
Merchandise: Low carbon, hot rolled, pickled and oiled, draw quality sheet steel
Factories: Canton, OH; Dothan, AL; Corinth, MS
Statement signed: October 13, 1976
Basis of claim: Appearing in
Effective date: February 10, 1975
Rate forwarded to RC of Customs: Chicago, November 2, 1976

(C) Company: Eddie Bauer, Inc., Redmond, WA

Articles: Camping clothes and equipment

Merchandise: Down, feathers, nylon, taffeta

Factories: Kent, Puyallup, Chewela, and Seattle, WA; Wetumpka, AL

Statement signed: October 12, 1976

Basis of claim: Used in

Effective date: May 2, 1975

Rate forwarded to RC of Customs, Chicago, October 29, 1976

(D) Company: Bristol Alpha Corp., Barceloneta, PR

Article: Ampicillin trihydrate—Pharmaceutical preparation

Merchandise: 6-amino penicillanic acid

Factory: Barceloneta, PR

Statement signed: August 18, 1976

Basis of claim: Used in

Effective date: June 16, 1976

Rate forwarded to RC of Customs: New York, November 30, 1976

(E) Company: Castle & Cooke, Inc., Bumble Bee Seafood Div., San Francisco, CA

Articles: Canned tuna fish

Merchandise: Tuna loins

Factories: Astoria, OR; Cambridge, MD; and Honolulu, HI

Statement signed: November 5, 1976

Basis of claim: Appearing in

Effective date: January 1, 1973

Rate forwarded to RC of Customs: San Francisco, November 23, 1976

Revokes: T.D. 76-235-P

(F) Company: Dairy Service Corp., Winter Garden, FL

Articles: Orange concentrate (Brix 58, 50.3, or 42 degrees)

Merchandise: Orange concentrate (Brix 45-66 degrees)

Factory: Brooksville, FL

Statement signed: November 10, 1976

Basis of claim: Used in

Effective date: December 9, 1974

Rate forwarded to RC of Customs: Miami, November 24, 1976

(G) Company: Dataproducts Corp., Dataribbon Div., Tarzana, CA

Articles: Inked printer ribbons

Merchandise: Nylon fabric

Factory: Tarzana, CA

Statement signed: August 23, 1976

Basis of claim: Used in

Effective date: September 9, 1975

Rate forwarded to RC of Customs: Los Angeles, November 23, 1976

(H) Company: E & J Gallo Winery, Modesto, CA

Articles: Still and sparkling wines

Merchandise: Grape juice from concentrate or grapes

Factories: Modesto, Livingston, and Fresno, CA

Statement signed: August 18, 1976

Basis of claim: Used in

Effective date: September 19, 1975

Rate forwarded to RC of Customs: San Francisco, November 24, 1976

(I) Company: Food Producers, Inc., Minneapolis, MN

Articles: Ice cream toppings, syrups, liquid hot chocolate drink base, and fruit for yogurt

Merchandise: Refined sugar

Factory: Minneapolis, MN

Statement signed: October 5, 1976

Basis of claim: Appearing in

Effective date: July 21, 1976

Rate forwarded to RC of Customs: Chicago, November 4, 1976

(J) Company: General Electric Co., Silicone Products Department, Waterford, NY

Articles: Silicone compounds, fluids, emulsions, dispersions, chemicals, intermediates, resins, rubber, and vulcanizing rubber

Merchandise: Silicon metal, methanol, copper powder, silica powder, diphenyldichlorosilane, and methyl tetramer

Factory: Waterford, NY

Statement signed: October 8, 1976

Basis of claim: Used in

Effective date: March 29, 1973

Rate forwarded to RC of Customs: New York, October 29, 1976

Amends: T.D. 74-179-A, as amended by T.D. 75-297-B

(K) Company: General Electric Company, Schenectady, New York

Articles: Oil well drilling motors GE752R (complete)

Merchandise: Oil well drilling motors GE752R (incomplete)

Factories: Erie, PA and Houston, TX

Statement signed: March 17, 1976

Basis of claim: Appearing in

Effective date: October 16, 1975

Rate forwarded to RC of Customs: New York, October 29, 1976

Revokes: Customs letter of October 20, 1976

(L) Company: General Mills Chemicals, Inc., Minneapolis, MN

Articles: Polyamide resins

Merchandise: Organic chemicals, intermediate products, and other raw materials

Factories: Kankakee, IL; Minneapolis, MN

Statement signed: April 23, 1976

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation, as shown by an abstract of the manufacturing records

Effective date: November 26, 1974

Rate forwarded to RC of Customs: Chicago, October 29, 1976

(M) Company: Houston Chemical Co. (Div. of PPG Industries, Inc.), Pittsburgh, PA

Articles: Tetraethyl lead fluid (TEF) (motor fuel anti-knock compound)

Merchandise: Lead, refined, in blocks (99.99% minimum purity by weight)

Factory: Beaumont, TX

Statement signed: October 19, 1976

Basis of claim: Appearing in

Effective date: November 21, 1974

Rate forwarded to RC of Customs: New York, November 4, 1976

(N) Company: ICI United States Inc., Dighton, MA

Articles: Dye intermediates

Merchandise: Dyestuffs

Factory: Dighton, MA

Statement signed: June 11, 1975

Basis of claim: Used in

Effective date: June 30, 1969

Rate forwarded to RC of Customs: New York, November 11, 1976

Amends: T.D. 52765-D; revokes Customs letter of October 29, 1976

(O) Company: International Harvester, Chicago, IL

Articles: Motor trucks

Merchandise: Tires, truck-Bias type with tubes

Factories: Springfield, OH; Fort Wayne, IN

Statement signed: August 26, 1976

Basis of claim: Used in

Effective date: January 10, 1976

Rate forwarded to RC of Customs: New York, November 12, 1976

(P) Company: M & R Refractory Metals, Inc., Winslow, NJ

Articles: Molybdenum disulfide; molybdc oxide; sodium molybdate; molybdenum powder; molybdenum pellets and rondelles; ferro molybdenum rondelles

Merchandise: Molybdenum concentrates (20-60% MO)

Factory: Winslow, NJ

Statement signed: October 6, 1976

Basis of claim: Appearing in

Effective date: January 23, 1975

Rate forwarded to RC of Customs: New York, October 29, 1976

(Q) Company: M & T Chemicals, Inc., Rahway, NJ

Articles: Polyvinyl chloride stabilizers—Thermolite-73, 31, 31-Super, 136, 137, 831-II, 831-III, and 134 (also known as CNF-280 or DM-8420).

Merchandise: Iso-Octyl Thioglycolate (IOMA) and Iso-Octyl Mercapto Acetate (IOMA)

Factories: Carrollton, KY, and Rahway, NJ

Statement signed: October 1, 1976

Basis of claim: Used in, less valuable waste

Effective date: September 25, 1973

Rate forwarded to RC of Customs: New York, November 9, 1976

(R) Company: Seneca Foods Corp., Dundee, NY

Articles: Frozen concentrated pineapple juice blend; frozen concentrated pineapple juice/orange juice blend; frozen concentrated pineapple juice/grapefruit juice blend

Merchandise: Unsweetened concentrated pineapple juice (61 degrees Brix-4.5 to 1 concentration factor) and (72 degree Brix with a 5.5 to 1 concentration factor)

Factory: Dundee, NY

Statement signed: October 13, 1976

Basis of claim: Appearing in

Effective date: For account of Castle & Cooke, Inc., per T.D. 55207
(1) January 1, 1973; for account of Seneca: January 21, 1976

Rate forwarded to RC of Customs: San Francisco, November 12, 1976

(S) Company: Skorecky Feather Co., Chicago, IL

Articles: Cleaned down and feathers and blends of cleaned down and feathers

Merchandise: Crude waterfowl down and feathers

Factory: Chicago, IL

Statement signed: June 2, 1976

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation, as shown by an abstract of the manufacturing records.

Effective date: January 6, 1976

Rate forwarded to RC of Customs: Chicago, November 26, 1976

(T) Company: Stepan Chemical Co., Northfield, IL

Articles: Kempre blowing agent and Kempre paste

Merchandise: Azodicarbonamide crude

Factory: Wilmington, MA

Statement signed: September 10, 1976

Basis of claim: Used in

Effective date: May 1, 1967

Rate forwarded to RC of Customs: Boston, November 30, 1976

Amends: T.D. 56365-B

(U) Company: Textile Piece Dyeing Co., Inc., Paterson, NJ

Articles: Dyed and finished piece goods of all types

Merchandise: Cotton, synthetic and blended synthetic and cotton piece goods of all types

Factory: Paterson, NJ

Statement signed: July 28, 1976

Basis of claim: Used in, less valuable waste

Effective date: August 19, 1976

Rate forwarded to RC of Customs: New York, October 22, 1976

(V) Company: Tri-Valley Growers, San Francisco, CA

Articles: Frozen concentrated pineapple juice blend, frozen concentrated pineapple juice and orange juice blend, and frozen concentrated pineapple juice and grapefruit juice blend

Merchandise: Unsweetened concentrated pineapple juice

Factory: Modesto, CA

Statement signed: September 30, 1976

Basis of claim: Appearing in

Effective date: For account of Castle & Cooke, Inc., August 1, 1973.

For Tri-Valley Growers' own account, December 5,
1975

Rate forwarded to RC of Customs: San Francisco, November 16,
1976

(W) Company: UOP Process Div., UOP Inc., Des Plaines, IL

Articles: Silica-alumina tungsten type catalyst

Merchandise: Ammonium metatungstate

Factories: McCook, IL, and Brian, LA

Statement signed: September 7, 1976

Basis of claim: Appearing in

Effective date: January 25, 1974

Rate forwarded to RC's of Customs: San Francisco, New Orleans,
New York, and Chicago, No-
vember 12, 1976

Amends: T.D. 70-12-D

(X) Company: Union Carbide Corp., New York, NY

Articles: Ethylene diamine; diethylene triamine; triethylene tetra-
mine; tetraethylene pentamine

Merchandise: Ethylene dichloride 99% min.; caustic soda 48.5/50.5%

Factories: Texas City, TX; Taft, LA

Statement signed: October 22, 1976

Basis of claim: Used in, with distribution to the products obtained
in accordance with their relative values at the time
of separation, as shown by an abstract of the manu-
facturing records

Effective date: October 1, 1974

Rate forwarded to RC of Customs: New York, November 23, 1976

(Y) Company: The Upjohn Co., La Porte, TX

Articles: N-butylisocyanate

Merchandise: Butylamine

Factory: La Porte, TX

Statement signed: October 11, 1976

Basis of claim: Used in

Effective date: September 26, 1975

Rate forwarded to RC of Customs: Houston, November 30, 1976

(Z) Company: Ventura Coastal Corp., Ventura, CA
Articles: Refined lemon oil, in bulk
Merchandise: Raw lemon oil
Statement signed: September 13, 1976
Basis of claim: Appearing in
Effective date: September 15, 1976
Rate forwarded to RC of Customs: San Francisco, November 12;
1976

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Nils A. Boe
Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Edward D. Re

Senior Judges

Mary D. Alger
Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Decisions

(C.D. 4682)

MICROPOINT, INC. v. UNITED STATES

Court No. 75-10-02567

Port of San Francisco

[Defendant's motion to dismiss granted.]

(Dated December 27, 1976)

Ian G. Allen for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Sidney N. Weiss*, trial attorney), for the defendant.

Memorandum Opinion and Order

WATSON, Judge: Plaintiff filed a protest against the classification of two entries of its merchandise, which protest was eventually approved by the Customs Service. In the approximately two-year interim before it was approved, evidently acting under the impression the first protest was sufficient to protect its rights regarding later entries of the same merchandise, plaintiff did not protest their classification within 90 days of their liquidation. Then, after the success of its first protest and more than 90 days after liquidation, plaintiff filed protests against the classification of the "interim" entries, following which the protests were denied as untimely.

Defendant now moves to dismiss for lack of jurisdiction the civil action brought to contest the denial of these protests. Defendant relies on the untimeliness of the protests. Plaintiff asserts its initial protest was sufficient to preserve its rights with regard to all its later importations and further argues that the relevant language of section 514 of the Tariff Act of 1930 (19 U.S.C. § 1514) is so vague and ambiguous it does not adequately inform the plaintiff of what must be done to protect its rights and therefore deprives it of due process of law in violation of the fifth amendment of the United States Constitution.

In 19 U.S.C. § 1514,* the statute, in relevant part, speaks of "decisions" of the appropriate customs officer; first that the decisions shall be final unless protested and then that a protest shall set forth distinctly and specifically each decision to which it is addressed. Included in the variety of decisions which become final unless protested are the classification of the merchandise and the liquidation of an entry. I think it is reasonably clear the "decisions" of which the statute speaks are acts which relate to specific existing entries of merchandise. While it may be within the realm of possibility for an importer to gain the impression the first decision is the only decision of importance, I don't think a fair and reasonably careful reading

*The relevant portion of the statute reads as follows:

- (a) * * * [D]ecisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—
* * * * *
(2) the classification and rate and amount of duties chargeable;
* * * * *
(5) the liquidation or reliquidation of an entry, or any modification thereof;
* * * * *

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Customs Court in accordance with section 2632 of Title 28 within the time prescribed by section 2631 of that title. * * *

(b) * * *. (1) A protest of a decision under subsection (a) of this section shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) of this section as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor. * * *

of the statute will support that impression. Unconstitutional vagueness exists when those whose conduct is affected by the statute can only guess at what it means not merely when the statute is the subject of an occasional misinterpretation.

The occurrence of such a mistake may point to the need for greater precision or superior clarity of expression but it does not, standing alone, point to a vagueness repugnant to the due process clause of the fifth amendment. The Constitution does not require perfection of expression, which is a rare accomplishment indeed, but only a degree of expression sufficient to communicate adequately when measured by common understanding and practices. *Association of American Physicians and Surgeons v. Weinberger*, 395 F. Supp. 125, 138 (N.D. Ill. 1975). See generally, *United States v. Petrillo*, 332 U.S. 1, 5-8 (1947).

As the statute stands I believe it is, if not pellucid, at least clear that the decisions of which it speaks are those the appropriate customs officer makes with respect to pre-existing entries and are final as against everyone, including the government, unless a protest is filed within 90 days of liquidation of the entry to which the decision relates. It is further clear that a protest must relate to and specify the decisions at issue as they are embodied in a liquidated entry. Neither the decisions nor the protests have any effect beyond the existing entries to which they refer. In a legal as well as practical sense each entry is a separate event and I think this is understandable from the language of the statute.

Since the single timely protest which plaintiff filed related only to the entries referred to therein and had no prospective effect on later entries and since the protests at issue herein were ultimately filed beyond the time limit allowed by the statute, defendant's motion to dismiss for lack of jurisdiction must be granted.

It is therefore,

ORDERED, ADJUSTED AND DECREED that this action be dismissed for lack of jurisdiction.

(C.D. 4683)

MICROPOINT, INC. v. UNITED STATES

Court No. 76-3-00752

Port of San Francisco

[Defendant's motion to dismiss granted.]

(Dated December 27, 1976)

Ian G. Allen for the plaintiff*Rex E. Lee*, Assistant Attorney General (*Sidney N. Weiss*, trial attorney), for the defendant.*Memorandum Opinion and Order*

WATSON, Judge: The disputed protests encompassed in this action were filed after the period allowed for their filing by 19 U.S.C. § 1514 (b)(2)(A). Thus one of the prerequisites for the exercise of jurisdiction by this court is lacking and they must be dismissed.

In addition, insofar as protest No. 2809-5-000886 protests entry Nos. 104642 and 106919, it is concededly moot. Insofar as protest No. 2809-5-000887 relates to entry No. 140371 in advance of its liquidation, it is premature and must be dismissed.

The memorandum opinion and order in Court No. 75-10-02567, 77 Cust Ct —, C.D. 4682, discusses more fully the reasons for rejecting plaintiff's argument that the statute allows an initial protest to preserve the importer's rights with respect to later entries of the same merchandise or is otherwise so vague as to deprive the importer of due process of law.

For the above reasons, it is

ORDERED, ADJUDGED AND DECREED, that this action be dismissed for lack of jurisdiction.

CUSTOMS COURT

(C.D. 4684)

RENE D. LYON Co., INC., v. UNITED STATES

Court Nos. 66/16734, etc.

Port of New York

[Defendant's motion to dismiss granted.]

[Plaintiff's cross-motion for summary judgment denied.]

(Dated December 28, 1976)

*Serko & Simon (Joel K. Simon of counsel) for the plaintiff.**Rex E. Lee, Assistant Attorney General (Mark K. Neville, Jr., trial attorney), for the defendant.**Memorandum Opinion and Order*

WATSON, Judge: Defendant has moved to dismiss these cases for lack of prosecution, pointing to the lack of activity since joinder of issue, which generally took place in March, September and October of 1973. Defendant's motion to amend the schedule of cases to include 70/60442 is granted.

In opposition plaintiff points to its filing of notices of consent to substitution of attorney in January and February of 1976 and to its submission of proposed stipulations to defendant (which followed the making of this motion but which plaintiff asserts was contemplated from the time of filing the notices of substitution). In addition plaintiff attributes its delay to the overflow of cases from the famous October 1970 reserve file and to a period of limited operations due to the dissolution of the partnership of Serko & Sklaroff. Plaintiff also filed a cross-motion for summary judgment.

I consider the period in which these cases were permitted to remain inactive to be beyond that which can be tolerated and a definite sign the actions were not being prosecuted with due diligence within the meaning of rule 8.3(b)(4) of the rules of this court. *Englishtwon Corp. v. United States*, 73 Cust. Ct. 240, C.R.D. 74-12 (1974). Cf. *Novelty Import Co. v. United States*, 72 Cust. Ct. 186, C.D. 4539 (1974).

Although the ultimate filing of the consents to substitution of attorney was a necessary prelude to further prosecution of the case, it was not in itself a particularly redeeming or affirmative act after the two to almost three year periods of inactivity in these cases. This is so whether or not the government's motion was prompted by the filing of the consents to substitution, whether or not the substitutions were indeed the first phase of a unitary plan to prepare and offer stipulations and whether or not plaintiff had a strong case on the merits.

The activity simply came too late to be the exercise of due diligence, a conclusion which is reinforced by the fact the notices of substitution filed in early 1976 were authorized back in October of 1974.

The existence of an excess of work from the October 1970 reserve file and the limitations of activity flowing from the dissolution of a law firm have little appeal to me as excuses for the periods of inactivity involved herein.

Since these are proper circumstances for dismissal for lack of prosecution plaintiff's motion for summary judgment is denied.

It is therefore,

ORDERED, ADJUDGED AND DECREED that the cases listed on the attached schedule are dismissed for lack of prosecution.

Decisions of the United States Customs Court

Customs Rules Decision

(C.R.D. 76-14)

MARUBENT AMERICA CORP. v. UNITED STATES

Opinion and Order on Defendant's Motion to Dismiss

Court No. 74-10-02924

Port of New York

[Motion denied.]

(Dated December 28, 1976)

Barnes, Richardson & Colburn for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Glenn E. Harris* and *Mark K. Neville*, trial attorneys), for the defendant.

NEWMAN, Judge: Defendant has moved, pursuant to rules 4.7(b) and 4.12, to dismiss this action for lack of jurisdiction.

The action challenges the appraisement of certain merchandise covered by entries 290071 and 303376 which were liquidated on December 15, 1972. Protest No. 1001-3-004358 was filed in connection therewith on March 15, 1973 and denied on April 26, 1974. The summons herein was filed on October 23, 1974.

Defendant apprises us, as the basis for its motion, that an earlier protest, No. 1001-3-004015, covering the same entries and also disputing the official appraisements, was filed on March 8, 1973 and denied on April 26, 1974. A separate civil action, designated Court No. 74-7-01781, was commenced with the filing of a summons on July 11, 1974.

Defendant contends that "[i]nsofar as plaintiff has filed two separate protests concerning the same class of merchandise contrary to the statutory scheme of 19 U.S.C. 1514(b) mandating one protest per class of merchandise, the second protest filed, No. 1001-3-004-58, is invalid and therefore, this court does not have jurisdiction" over this action which encompasses that protest.*

*Section 514(b)(1), Tariff Act of 1930, as amended by the Customs Administrative Act of 1970, provides that—

* * * Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. * * *

Plaintiff has not opposed the motion to dismiss.

The court, noting the paucity of information in the memorandum accompanying defendant's motion to dismiss, has examined the files in both actions which disclose the following.

Protest No. 1001-3-004015, the subject of Court No. 74-7-01781, challenges the appraisement of the merchandise on both entries at the "invoice unit values plus an addition for currency revaluation, or any value higher than the exporter's invoice unit prices", less certain included nondutiable charges, and asserts that the proper dutiable values are the exporter's invoice unit prices, less the alleged nondutiable charges. The summons filed therein sets forth the same claim.

On August 5, 1976, Court No. 74-7-01781 and others were suspended, without objection by defendant, under rule 14.7, pending the final determination of *C.B.S. Imports Corporation v. United States*, Court No. 73-1-00020. The common issue of law alleged therein was—

Whether an addition to the invoiced unit prices, for fluctuation of currency, may properly be made in determining export value under Section 402(b).

Protest No. 1001-3-004358 contests the appraisement of the merchandise based on the "importer's resale price plus an addition for currency revaluation" and makes the same claim as set forth in protest No. 1001-3-004015 respecting the correct dutiable values. The summons sets forth the same claim.

On October 5, 1976, plaintiff moved under rule 14.7 to suspend the instant action, No. 74-10-02924, and others under *Mitsui & Co. (U.S.A.), Inc. v. United States*, Court No. R68/8333, stating that the common question of law therein is whether the—

* * * transaction between the exporter and importer is a "sale" for purposes of Section 402(b), and whether the invoiced prices fairly reflect the value of the merchandise.

Defendant strenuously opposed plaintiff's motion to suspend on the ground that the *Mitsui* case raises different issues and requires different proofs. The government also noted in its memorandum that it was preparing a separate motion to dismiss Court No. 74-10-02924 on jurisdictional grounds, and that "this case ought not to be suspended until full consideration has been given to the jurisdictional question, even if the Court should find suspension otherwise appropriate".

However, on October 20, 1976 the court, per Judge Watson, granted the motion to suspend the enumerated actions.

It is noted that the instant motion to dismiss was filed the same day, October 20, 1976. Nevertheless, defendant failed to advise the court herein that a motion to suspend the case was pending, and *failed thereafter to inform this member of the court of the action taken on that motion directing the suspension.*

The suspension procedure in this court is not an idle gesture. And most certainly, Judge Watson's order is not an idle gesture. The purpose of rule 14.7, familiarity with which is presumed, is to facilitate the disposition of actions and dispense with further proceedings in cases which may never be tried. *Cf. H. H. Elder & Co. et al. v. United States*, 69 Cust. Ct. 344, C.R.D. 72-28 (1972). Should the test case under which actions are suspended be decided in favor of defendant, the actions may be abandoned; should the test case be decided in favor of plaintiff, and the merchandise in the suspended cases is similar in all material respects to that in the test case, the court may deem the decision controlling in the suspended cases. This practice frequently has, among other benefits, the salutary effect of avoiding the retrial of the same issues. Hence, the significant importance of "suspension" to the orderly disposition of cases in this forum cannot be overestimated.

The concept of "suspending" cases under a "test case" is a constructive tool which is unique to the United States Customs Court. Since many cases commonly appear on the court's dockets involving the same issue of law or fact, it is readily apparent that there must be available some procedural vehicle whereby litigants may be permitted to appropriately delay further proceedings until the final disposition of the test case.

Here, defendant, filed its motion to dismiss, and pursuant to rule 17(h) stated that the action was in the *Complaint File*. At this juncture, it must be noted that rule 17(h) provides:

Papers filed after an action has been commenced shall identify, with respect to each action affected by the papers, the court file (specific reserve file, suspension file, or suspension disposition file) in which the action is listed; and, if the action has been assigned, the name of the judge to whom the action has been assigned or reassigned.

However, a check of the docket records in the Clerk's office reveals that in point of fact no complaint has been filed in this action, and on October 20, 1976 (the date on which defendant filed its motion to dismiss) this action was listed by the Clerk of the court in the *October 1974 Reserve File*. Consequently, it is clear that defendant's motion to dismiss erroneously identified the court file in which this action was listed by the Clerk of the court. Moreover, and of greater significance, is the fact the defendant failed to advise this member

of the court that plaintiff had *previously* submitted a motion for suspension, which was then pending; and defendant also failed *thereafter* to call to this court's attention the fact that plaintiff's motion for suspension was granted by Judge Watson on October 20, 1976. Accordingly, there was a failure by defendant to disclose the fact there was a *pending* motion for suspension; and also a failure to disclose *thereafter* the vital suspended status of this case subsequent to the service of Judge Watson's order on October 21, 1976. In the instant motion to dismiss, I prefer to think, and believe, that defendant inadvertently overlooked specific references to the suspended status of this case.

In summary, "suspension" is a vital procedural tool to use—but not to abuse—particularly in the pre-trial period. And, of course, it is fundamentally essential for motion papers to contain specific references to a suspension status of a case.

Defendant's motion to dismiss is hereby denied; but without prejudice to its renewal upon stating all the relevant facts.

**Decisions of the United States
Customs Court**
Abstracts
Abstracted Protest Decisions

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

DEPARTMENT OF THE TREASURY, January 3, 1977.
CUSTOMS COURT
VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par. or Item No. and Rate	HELD Par. or Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE	
							C. A. D. 1157)	(C. A. D. 1156, 1157)
P76/292	Ford, J. December 29, 1976	Morris Friedman & Co.	65/5885, etc.	Item 653.40 19%	Item 653.35 10.5%	U.S. v. Morris Friedman & Co. (C.A.D. 1157)	Philadelphia Candlesticks, candlehold- ers, etc.	Philadelphia Candlesticks, candlehold- ers, etc.
P76/293	Ford, J. December 29, 1976	Morris Friedman & Co. et al.	74-11-03194, etc.	Item 653.37 11% or 9.5%	Item 653.35 6% or 5%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Philadelphia Candlesticks, candlehold- ers, etc.	Philadelphia Candlesticks, candlehold- ers, etc.
P76/294	Ford, J. December 29, 1976	May Dept. Stores Co.	68/23286	Item 653.40 19%	Item 653.35 10.5%	U.S. v. Morris Friedman & Co. (C.A.D. 1156)	New York Candlesticks, candlehold- ers, etc.	New York Candlesticks, candlehold- ers, etc.

P76/295	Ford, J. December 29, 1976	The May Dept. Stores Co. 60/2376	Item 653.37 17% (items marked "A") Item 653.39 19% (items marked "B")	U.S. v. Morris Friedman & Co. (C.A.D. 1156) (items marked "A") Mobile, Inc. v. U.S. (C.R.D. 73-11) (items marked "B")	Item 653.35 9% (items marked "A") Appraisement and liquidation not in accord- ance with law; protest pre- mature; entry ordered re- turned to re- gional com- missioner for appropriate administrative action (items marked "B")	U.S. v. Morris Friedman & Co. (C.A.D. 1156) (items marked "A") Table, floor or portable indoor lamps, of brass (items marked "A" under entry 818655) Lamps imported with elec- trical light bulbs; sepa- rate articles of commerce (items marked "B" under entry 786227)	New York Candlessticks, candlehold- ers, etc. Table, floor or portable indoor lamps, of brass (items marked "A" under entry 818655) Lamps imported with elec- trical light bulbs; sepa- rate articles of commerce (items marked "B" under entry 786227)
P76/296	Ford, J. December 29, 1976	New York Merchandise Co., Inc.	71-8-00909, etc.	Item 653.37 13% or 9.5%	Item 653.35 7% or 5%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Portland, Oreg. Candlessticks, candlehold- ers, etc.
P76/297	Landis, J. December 29, 1976	Hancock Gross, Inc.	70-3-00582	Item 774.60 8.5%	Item 773.25 5%	Hancock Gross, Inc. v. U.S. (C.D. 4556, aff'd C.A.D. 1153)	Philadelphia Washers of rubber or plastic
P76/298	Watson, J. December 29, 1976	Nichimon Co., Inc.	74-11-03066, etc.	Item 685.30 6.5%	Item 678.50 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York AM/FM/MPX stereo 8 track tape player with outout without speakers, "JVC Nivico" brand models 3116 and 4385
P76/299	Maletz, J. December 29, 1976	Safdieye Dabah Int'l, Inc.	73-8-02237	Item 700.60 2%	Item 700.55 6%	Agreed statement of facts	New York Vinyl sandals (entry 254477)

**Decisions of the United States
Customs Court**

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/131	Richardson, J. December 29, 1976	H. W. Robinson Air Freight Corp., a/c Jaymar Ruby, Inc.	R64/21625, etc.	Constructed value	Appraised values less \$0.36 per yard	H. M. Young Assoc- iates, Inc. v. U.S. (C.D. 4388, aff'd C.A.D. 1138)	New York "Elastic weavings", "elastic webbing", etc.
R76/132	Richardson, J. December 29, 1976	H. W. Robinson & Co., Inc., a/c Jay- mar Ruby, Inc.	R68/17122, etc.	Constructed value	Appraised values less \$0.36 per yard	H. M. Young Assoc- iates, Inc. v. U.S. (C.D. 4388, aff'd C.A.D. 1138)	New York "Cotton elastic web- bing", "elastic weavings", etc.
R76/133	Richardson, J. December 29, 1976	H. M. Young Assoc- iates, Inc., et al.	74-3-00594, etc.	Constructed value	Appraised values less \$0.36 per yard	H. M. Young Assoc- iates, Inc. v. U.S. (C.D. 4388, aff'd C.A.D. 1138)	New York "Tapes Webbing" #7010 - 33/4", #7300 - 4", etc.

Index

U.S. Customs Service

	T.D. No.
Antidumping, sec. 153.46, C.R., amended; Tuners from Japan-----	77-26
Articles conditionally free, subject to a reduced rate, etc.; treatment of charges against the bond required in connection with certain entries of merchandise under the Generalized System of Preferences; secs. 10.173(a)(3) and 172.22(c), C.R. amended-----	77-27
Drawback decisions:	
Finished and unfinished builders hardware-----	77-29-A
Pulleys-----	77-29-B
Camping clothes and equipment-----	77-29-C
Ampicillin trihydrate—Pharmaceutical preparation-----	77-29-D
Canned tuna fish-----	77-29-E
Orange concentrate (Brix 58, 50.3, or 42 degrees)-----	77-29-F
Inked printer ribbons-----	77-29-G
Still and sparkling wines-----	77-29-H
Ice cream toppings, syrups, liquid hot chocolate drink base, and fruit for yogurt-----	77-29-I
Silicone compounds, fluids, emulsions, dispersions, chemicals, intermediates, resins, rubber, and vulcanizing rubber-----	77-29-J
Oil well drilling motors GE752R (complete)-----	77-29-K
Polyamide resins-----	77-29-L
Tetraethyl lead fluid (TEF) (motor fuel anti-knock compound)-----	77-29-M
Dye intermediates-----	77-29-N
Motor trucks-----	77-29-O
Molybdenum disulfide; molybdate oxide; sodium molybdate; molybdenum power; molybdenum pellets and rondelles; ferro molybdenum rondelles-----	77-29-P
Polyvinyl chloride stabilizers—Thermolite-73, 31, 31-Super, 136, 137, 831-11, 831-111, and 134 (also known as CNF-280 or DM-8420)-----	77-29-Q
Frozen concentrated pineapple juice blend; frozen concentrated pineapple juice/orange juice blend; frozen concentrated pineapple juice/grapefruit juice blend-----	77-29-R
Cleaned down and feathers and blends of cleaned down and feathers-----	77-29-S
Kempore blowing agent and kempore paste-----	77-29-T
Dyed and finished piece goods of all types-----	77-29-U
Frozen concentrated pineapple juice blend, frozen concentrated pineapple juice and orange juice blend, and frozen concentrated pineapple juice and grapefruit juice blend-----	77-29-V

Drawback decisions:—Continued	T.D. No.
Silica-alumina tungsten type catalyst.....	77-29-W
Ethylene diamine; diethylene triamine; triethylene tetramine; tetraethylene pentamine.....	77-29-X
N-butylisocyanate.....	77-29-Y
Refined lemon oil, in bulk.....	77-29-Z
Vessels in foreign and domestic trades; dutiability of foreign purchases of vessel equipment purchased in foreign ports by American fishing boats; sec. 4.15, C.R., amended.....	77-28

Customs Court

Actions not prosecuted with due diligence:

- Motion to dismiss for lack of jurisdiction, C.D. 4684
- Period of inactivity inexcusable, C.D. 4684

Construction:

Rules of the United States Customs Court:

- Rule 4.7b, C.R.D. 76-14
- Rule 4.12, C.R.D. 76-14
- Rule 8.3(b)(4), C.D. 4684
- Rule 14.7, C.R.D. 76-14
- Rule 17(h), C.R.D. 76-14

Tariff Act of 1930, section 514(b)(1), C.R.D. 76-14

U.S. Code, title 19, section 1514(b)(2)(A), C.D.'s 4682, 4683

Cross-motion for summary judgment, C.D. 4684

Definition (*see* Words and phrases)

Dismissal for lack of jurisdiction, motion for; protests untimely filed, C.D. 4682

Lack of jurisdiction, motion for; protests untimely filed, C.D. 4683

Motion to dismiss for lack of jurisdiction:

Actions not prosecuted with due diligence, C.D. 4684

Plaintiff filed two separate protests concerning same class of merchandise,
C.R.D. 76-14

Previous motion for suspension granted, C.R.D. 76-14

Protests untimely filed, C.D.'s 4682, 4683

Period of inactivity inexcusable; actions not prosecuted with due diligence, C.D.
4684

Plaintiff filed two separate protests concerning same class of merchandise; motion
to dismiss for lack of jurisdiction, C.R.D. 76-14

Previous motion for suspension granted; motion to dismiss for lack of jurisdiction,
C.R.D. 76-14

Protests untimely filed:

Dismissal for lack of jurisdiction, motion for, C.D. 4682

Lack of jurisdiction, motion for, C.D. 4683

Motion to dismiss for lack of jurisdiction, C.D.'s 4682, 4683

Summary judgment, cross-motion for, C.D. 4684

Words and phrases:

Decisions, C.D. 4682

Due:

Diligence, C.D. 4684

Process of law, C.D. 4682

Lack of jurisdiction, C.R.D. 76-14

Suspension, C.R.D. 76-14

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4
J
A
2
6
7
7
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